STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

Appeal from the Michigan Court of Appeals
William B. Murphy, Patrick M. Meter and Deborah A. Servitto

SBC HEALTH MIDWEST, INC,

Petitioner-Appellee,

v

CITY OF KENTWOOD,

Respondent-Appellant.

Supreme Court No. 151524

Court of Appeals No. 319428

MTT Docket No. 416230

BRIEF ON APPEAL – APPELLEE

ORAL ARGUMENT REQUESTED

John D. Pirich (P23204)
Stewart L. Mandell (P33781)
Daniel L. Stanley (P57052)
Honigman Miller Schwartz and Cohn LLP
Attorneys for SBC Health Midwest Inc.
222 North Washington Sq., Ste. 400
Lansing, MI 48933-1800
(517) 377-0712

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COUNTER-STATEMENT OF JURISDICTION

The Statement of Jurisdiction on page v of the City of Kentwood's Brief on Appeal is accepted with one change: this Court has jurisdiction over the appeal under MCR 7.303(B)(1) and not MCR 7.301(A)(2).

STATEMENT OF QUESTION PRESENTED

The Statement of Question Presented on page vi of the City of Kentwood's Brief on Appeal is accepted.

I. INTRODUCTION AND SUMMARY

The sole issue in this case is "whether the tax exemptions set forth under MCL 211.9(1)(a) are available to a for-profit educational institution." Generally, personal property tax exemptions are in Section 9 through Section 9o (MCL 211.9o) of the General Property Tax Act (the "Act"), and real estate property tax exemptions are in Section 7 (MCL 211.7o) through Section 7ww (MCL 211.7ww) of the Act. Petitioner-Appellee, SBC Health Midwest Inc. ("SBC") has sought a personal property tax exemption solely under Section 9(1)(a), MCL 211.9(1)(a) ("Section 9(1)(a)"). Section 9(1)(a) reads:

> (1) **The following personal property**, and real property described in subdivision (j)(i), **is exempt from taxation**:
>
> (a) **The personal property of charitable, educational, and scientific institutions** incorporated under the laws of this state. This exemption does not apply to secret or fraternal societies, but the personal property of all charitable homes of secret or fraternal societies and nonprofit corporations that own and operate facilities for the aged and chronically ill in which the net income from the operation of the nonprofit corporations or secret or fraternal societies does not inure to the benefit of a person other than the residents is exempt. [Emphasis added.]

Section 9(1)(a) clearly exempts: "(t)he personal property of charitable, educational and scientific institutions…."

The term "nonprofit" is not in the emphasized language above. **Yet twice, in Public Act 83 of 1974 and Public Act 140 of 2003, the Legislature added the word "nonprofit" to the last sentence of Section 9(1)(a) and chose not to add it to the language at issue.** The word "nonprofit" is also in seventeen other sections of the Act. This conclusively confirms that if the Legislature had intended to limit the exemption in the first sentence of Section 9(1)(a) to nonprofit educational institutions, it certainly knew how to do so and would have done so.

A. The Court Of Appeals Properly Enforced Section 9(1)(a)'s Unambiguous Language.

Below, where both parties agreed that SBC's state of incorporation was irrelevant, the Court of Appeals correctly:

> i) recognized that this case should be decided under the foremost rule of statutory construction that unambiguous statutes are enforced as written. *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 58; 642 NW2d 663 (2002);
>
> ii) determined that Section 9(1)(a)'s unambiguous language contains no requirement that an educational institution be "nonprofit" in order to qualify for exemption; and
>
> iii) concluded that the personal property of a for-profit educational institution qualifies for exemption. Court of Appeals Opinion, App at 463a-466a.[1]

B. The City's Statutory Construction.

Section 7n, MCL 211.7n ("Section 7n"), is one of the statutes that generally addresses real estate tax exemptions and, in relevant part exempts the "(r)eal estate or personal property owned and occupied by **nonprofit theater**, library, educational, or scientific institutions . . . with the buildings and other property thereon while occupied by them solely for the purposes for which the institutions were incorporated. . . . " (Emphasis added.)[2] The City of Kentwood's

[1] Consistent with the decision below is that in multiple cases, this Court has recognized that for-profit educational institutions can obtain property tax exemption. *Home and Day School v Detroit*, 76 Mich 521; 43 NW 593 (1889) (holding that property of a for-profit school was exempt) and *Detroit v Detroit Commercial College*, 322 Mich 142; 33 NW2d 737 (1948) (recognizing that this Court had granted exemption to a for-profit educational institution in *Webb Academy v City of Grand Rapids*, 209 Mich 523; 177 NW 290 (1920)). That these two cases were decided prior to 1963 does not negate their import. As shown *infra*, the 1963 Constitution does not forbid the Legislature from exempting property of for-profit educational institutions.

[2] As described *infra*, prior to 1974, Section 7n exempted the property of "library, educational, or scientific institutions. . . ." Public Act 358 of 1974 added two words, "nonprofit theater," to Section 7n **in order to exempt nonprofit theaters**. For that reason, Section 7n does not require an educational institution to be nonprofit to qualify for exemption. This Court, however, need not address Section 7n's requirements because SBC has sought exemption only under Section 9(1)(a), and it unambiguously exempts for-profit educational institutions.

Brief on Appeal ("City Brief"), incorrectly asserts that this Court should apply the doctrine of *in pari materia* and graft the word "nonprofit" from Section 7n into Section 9(1)(a), because:

1) Under Section 7n an educational institution must be non-profit to be exempt;
2) Sections 7n and 9(1)(a) would conflict if Section 9(1)(a) exempted for-profit educational institutions;
3) This is proper under *Wexford Medical Group v City of Cadillac*, 474 Mich 192; 713 NW2d 734 (2006) ("*Wexford*");
4) The Court of Appeals decision below improperly limited the meaning of the term "occupy"; and
5) The Michigan Constitution prohibits the Legislature from exempting for-profit educational institutions.

C. The Court Of Appeals Correctly Rejected The City's Statutory Construction.

Most importantly, the City's statutory construction improperly and erroneously adds a significant new word and requirement to Section 9(1)(a), thereby violating the foremost statutory construction rule that unambiguous statutory language must be enforced as written. Section 9(1)(a) clearly grants personal property exemption to three types of institutions: charitable, educational and scientific. **Critically, Section 9(1)(a) and its predecessors have been amended on numerous occasions, yet the Legislature has never chosen to add the word "nonprofit" in order to restrict exemption to non-profit educational institutions.** Given that Section 9(1)(a) is unambiguous, the Court of Appeals correctly followed two prior decisions of this Court, *Tyler v Livonia Pub Sch*, 459 Mich 382, 392; 590 NW2d 560 (1999) and *Voorhies v Faust*, 220 Mich 155, 157; 189 NW 1006 (1922), and rejected the City's argument. Court of Appeals Opinion, p 3; App at 465a.

As detailed *infra*, the City's construction is also wrong for the following reasons:

1) *Wexford, supra*, supports the Court of Appeals decision below;
2) The City's construction improperly adds words to Section 7n that the Legislature never enacted;

3) The City's construction would impermissibly render Section 9(1)(a) coextensive with Section 7n and, therefore, nugatory;

4) For profit educational institutions are exempt under Section 7n;

5) Even if for-profit educational institutions are not exempt under Section 7n, under the Court of Appeals decision, Sections 7n and 9(1)(a) do not conflict, are in harmony, are fully effective and are consistent with how Michigan courts have previously construed tax exemption statutes;

6) If Section 7n is unambiguous in not granting exemption to for-profit educational institutions, then Section 9(1)(a) is unambiguous in exempting for-profit educational institutions; and

7) The Legislature may exempt for-profit educational institutions under the Michigan constitution.

In our democracy, the people's elected representatives enact statutes, and thereby establish public policy. It is the Legislature that decides what to leave in and what to leave out. For over a century, the people's elected representatives have chosen not to add the word "nonprofit" to the language at issue in Section 9(1)(a). The Court of Appeals decision below correctly effectuated that decision by enforcing Section 9(1)(a)'s unambiguous language. Therefore, SBC respectfully asks that this Court affirm the Court of Appeals decision. Alternatively, SBC respectfully requests that the Court determine that leave to appeal was improvidently granted and dismiss the City's appeal.

II. STATEMENT OF FACTS

SBC accepts the Statement of Facts in the City's Brief. In short, per this Court's Order granting leave, the only issue before this Court is "whether the tax exemptions set forth under MCL 211.9(1)(a) are available to a for-profit educational institution."

III. ARGUMENT

A. Standard Of Review.

The Court of Appeals Opinion below correctly summarized the standard of review as follows:

> This Court reviews *de novo* a trial court's decision to grant or deny a motion for summary disposition. *Rowland v Washtenaw Co Rd Comm*, 477 Mich 197, 202; 731 NW2d 41 (2007). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). In evaluating a motion for summary disposition brought under (C)(10), a reviewing court considers affidavits, pleadings, depositions, admissions and other evidence submitted by the parties in the light most favorable to the party opposing the motion. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996); MCR 2.116(G)(5). If the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.* at 362–363. Issues of statutory interpretation are also reviewed de novo. *City of Riverview v Sibley Limestone*, 270 Mich App 627, 630; 716 NW2d 615 (2006).
>
> Decisions from the tax tribunal are reviewed for a misapplication of law or adoption of a wrong legal principle. *Wexford Med Group v City of Cadillac*, 474 Mich 192, 201; 713 NW2d 734 (2006). This Court reviews the tax tribunal's interpretation of a tax statute de novo. *Id.* [App at 463a.]

The City claims that under this Court's Opinion in *Wexford, supra*, the Tax Tribunal's decision is entitled to "deference." City Brief at 5. Deferring to the Tribunal based on *Wexford* would be a mistake for multiple reasons. First, in *Wexford*, this Court made clear that it conducts *de novo* review of the Tax Tribunal's interpretation of a statute. *Wexford*, 474 Mich at 201. Second, while in *Wexford* the Court stated that it would "generally defer to the Tax Tribunal's interpretation of a statute that it is delegated to administer," the Court did not defer in that case. *Wexford*, 474 Mich at 221. The Court did not defer to the Tribunal in *Wexford* because the Tribunal "misinterpreted the law" when it erroneously engrafted a nonexistent requirement into an exemption statute. *Id.* The same is true here, where the Tribunal grafted a nonexistent requirement into Section 9(1)(a). Third, subsequent to this Court's *Wexford* decision, it decided *In re Complaint of Rovas against SBC Michigan*, 482 Mich 90, 102-103, 108; 754 NW2d 259 (2008) and clarified the standard of review for administrative agencies. In that case, this Court

clearly stated that the applicable standard is "respectful consideration," not deference, and in any event, the statutory construction must enforce a statute's plain meaning. Specifically, in *Rovas*, this Court held:

> [S]tatutory interpretation is a question of law that this Court reviews *de novo*. Thus, concepts such as 'abuse of discretion' or 'clear error,' . . . simply do not apply to a court's review of an agency's construction of a statute.
>
> * * *
>
> [an] agency's interpretation is entitled to respectful consideration and, if persuasive, should not be overruled without cogent reasons. . . . **But, in the end, the agency's interpretation cannot conflict with the plain meaning of the statute. [**482 Mich at 102-103, 108 (emphasis added, citations omitted).]

Thus, the Tribunal decision is entitled to respectful consideration, but it is not given deference or accepted if it conflicts "with the plain meaning of the statute." *Id.* [3]

B. The Court Of Appeals Correctly Applied The Unambiguous Language Of Section 9(1)(a), When It Declined To Unlawfully Read Into The Statute, And Thereby Add To The Statute, The Word "Nonprofit."

The City has emphasized that exemption statutes are strictly construed in favor of taxing units. Decisions such as *Inter Co-op Council v Dept of Treasury*, 257 Mich App 219, 223; 668 NW2d 181 (2003), however, have established that exemption statutes "are to be interpreted according to ordinary rules of statutory construction." Court of Appeals Opinion, p 2; App at 464a. Accordingly, as detailed below, the Court of Appeals correctly enforced an unambiguous exemption pursuant to the foremost rule of statutory construction.

[3] The City Brief, p 5, also contains the correct respectful consideration standard of review and quotes *Younkin v Zimmer*, 497 Mich 7, 10; 857 NW2d 244 (2014), which followed the standard of review stated in *Rovas*, *supra*.

1. The Unambiguous Language Of Section 9(1)(a) Does Not Contain A Requirement That An Educational Institution Be Nonprofit.

Section 9(1)(a) is in the part of the Act that primarily addresses personal property exemptions. Section 9(1)(a) unambiguously exempts the personal property "of charitable, educational, and scientific institutions. . . ." MCL 211.9(1)(a). This language in Section 9(1)(a) does not include the word "nonprofit" or in any way require that educational institutions be nonprofit.[4]

In contrast, on two separate occasions, in 1974 PA 83 and 2003 PA 140, the Legislature added the word "nonprofit" to the last sentence of Section 9(1)(a) and chose not to add it to the language at issue. Specifically, in 1971 PA 189, the language in Section 9 that immediately follows the language at issue was the following:

> Provided, That such exemptions shall not apply to secret or fraternal societies, but the personal property of all charitable homes of such societies shall be exempt. [App at 324a.]

1974 PA 83 was enacted in April of 1974. Amongst its changes in the language quoted immediately above, is the addition of "non-profit":

> The exemptions shall not apply to secret or fraternal societies, but the personal property of all charitable homes of such societies and **non-profit** corporations which own and operate facilities for the aged and chronically ill, in which no part of the net income from the operation of such corporations inures to the benefit of any person(s) other than the residents shall be exempt. [App at 1-2b (emphasis added).]

[4] In the Court of Appeals the City admitted the unambiguous language of Section 9(1)(a) does not require non-profit status. See page 6 of the City's Brief on Appeal to the Court of Appeals, in which the City states "MCL 211.9(1)(a) does not contain an explicit reference to 'non-profit' or 'for-profit' status." App at 384a. See also City's Brief on Appeal to the Court of Appeals at 9, n 6 ("The City does not dispute that the word 'nonprofit' is not found in MCL 211.9(1)(a).") App at 387a.

Senate Bill 133 of 2003 passed the Michigan House of Representatives with "nonprofit" again added to the last sentence of Section 9(1)(a). This is on page 30 of the bill. App at 35b. Public Act 140 of 2003, enacted the bill with "nonprofit" included a second time in the last sentence of Section 9(1)(a). App at 57b. The foregoing conclusively confirms that if the Legislature had intended to limit exemption in the first sentence to nonprofit educational institutions, it certainly knew how to do so and would have done so.

Indeed, the Legislature has ample experience in using the word "nonprofit" in statutes, especially in using "nonprofit" in the Act to require nonprofit status. Currently, the word "nonprofit" is in seventeen different sections of the Act. While the word "nonprofit" is used throughout the Act, including twice in the sentence that follows the language at issue, the word "nonprofit" is not in the language at issue in Section 9(1)(a).[5]

2. In The Language At Issue In Section 9(1)(a), The Legislature Has Not Seen Fit To Add The Word "Nonprofit" For Over A Hundred Years.

Since at least 1897, the Legislature has allowed personal property tax exemption for "(t)he personal property of benevolent, charitable, educational and scientific institutions . . . ." MCL 211.9(1). In the 1897 version of the statute, the language at issue did not include the word "nonprofit" or in any other way require the exemption claimant to be nonprofit. 1897 CL 3832, p 1190. App at 363a. Had the Legislature intended Section 9(1)(a) to apply only to nonprofit educational institutions, the Legislature would have simply added the word "nonprofit" to the language at issue. Accomplishing this would have required a simple one-word amendment. The Legislature has had over a century and numerous opportunities to so amend the statute. Indeed,

[5] The seventeen sections of the Act that currently include the word "nonprofit" are: MCL 211.7a, MCL 211.7d, MCL 211.7m, MCL 211.7n, MCL 211.7o, MCL 211.7r, MCL 211.7x, MCL 211.7z, MCL 211.7kk, MCL 211.7mm, MCL 211.7tt, MCL 211.7uu, MCL 211.8, MCL 211.8a, MCL 211.9, MCL 211.27 and MCL 211.27a.

since 1974 alone, the Legislature has amended Section 9 a dozen times without ever adding the word "nonprofit" to the language at issue.[6] The Court of Appeals correctly applied the unambiguous language of Section 9(1)(a).

3. Pursuant To The Foremost Rule Of Statutory Construction, The Court Of Appeals Properly Enforced Section 9(1)(a)'s Unambiguous Language.

In our democratic system of government, the people's elected representatives determine statutory language. Accordingly, it is not a court's role to add words to, or delete words from, an unambiguous statute. In *Roberts*, 466 Mich at 63, this Court described the controlling preeminent principles of statutory construction:

> An anchoring rule of jurisprudence, and the foremost rule of statutory construction, is that courts are to effect the intent of the Legislature. *People v Wager*, 460 Mich 118, 123, n 7; 594 NW2d 487 (1999). To do so, we begin with an examination of the language of the statute. *Wickens v Oakwood Healthcare System*, 465 Mich 53, 60; 631 NW2d 686 (2001). If the statute's language is clear and unambiguous, then we assume that the Legislature intended its plain meaning and the statute is enforced as written. *People v Stone*, 463 Mich 558, 562; 621 NW2d 702 (2001). A necessary corollary of these principles is that a court may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself. *Omne Financial, Inc v Shacks, Inc*, 460 Mich 305, 311; 596 NW2d 591 (1999).

More recently, in *Whitman v City of Burton*, 493 Mich 303, 311-312; 831 NW2d 223 (2013), this Court reaffirmed these principles and their importance:

> **When interpreting a statute, we follow the established rules of statutory construction, the foremost of which is to discern and give effect to the intent of the Legislature. To do so, we begin by examining the most reliable evidence of that intent, the language of the statute itself. If the language of a statute is**

[6] The twelve acts that have amended MCL 211.9 since 1974 are: 1976 PA 270, 1978 PA 54, 1984 PA 206, 1990 PA 317, 1993 PA 273, 1996 PA 582, 2003 PA 140, 2006 PA 550, 2008 PA 334, 2008 PA 337, 2011 PA 289, and 2011 PA 290.

> **clear and unambiguous, the statute must be enforced as written and no further judicial construction is permitted.** Effect should be given to every phrase, clause, and word in the statute and, whenever possible, no word should be treated as surplusage or rendered nugatory. **Only when an ambiguity exists in the language of the statute is it proper for a court to go beyond the statutory text to ascertain legislative intent.** **[**Emphasis added.]

See also *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999) ("If the language of the statute is unambiguous, the Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written. No further judicial construction is required or permitted.").

In *Walters v Nadell*, 481 Mich 377, 396; 751 NW2d 431 (2008), this Court even specified that a court should not engraft language from one statute to another, as the City urges here:

> The United States Supreme Court's sound reasoning is no different from this Court's own standards of statutory interpretation. We assume that the Legislature intended what it plainly expressed. See *Liss v Lewiston–Richards, Inc*, 478 Mich 203, 207, 732 NW2d 514 (2007). **We do not read language into an unambiguous statute.** *People v McIntire*, 461 Mich 147, 153, 599 NW2d 102 (1999). **And when the Legislature includes certain language in one statutory provision but not in another, we do not read the missing language into the statute under the assumption that the Legislature meant to include it; rather, we proceed under the assumption that the Legislature made a deliberate choice to not include the language.** *Farrington v Total Petroleum, Inc*, 442 Mich 201, 210; 501 NW2d 76 (1993). **[**Emphasis added.]

The City urges this Court to ignore the unambiguous Section 9(1)(a) and violate the foremost rule of statutory construction under *Wexford, supra*. The City, however, disregards that *Wexford* followed this paramount rule. In *Wexford*, the Tribunal and the Court of Appeals had denied a charitable institution property tax exemption claim due to Wexford's not providing a sufficient quantum of charity. *Wexford*, 474 Mich at 200. In reversing, this Court noted that the

Legislature had not enacted such a quantum of charity requirement and recognized that therefore, it would have been improper for the judiciary to add such a requirement. *Id.* at 213. Consequently, this Court concluded that the Tribunal had, "erroneously engrafted a nonexistent threshold of charitable activity," and that "(h)ad the Legislature wanted such a threshold, it could have easily included one." *Id.* at 221. Therefore, under *Wexford*, *supra*, this Court should: i) follow the foremost rule of statutory construction and enforce Section 9(1)(a)'s unambiguous language, ii) not add a requirement of nonprofit status where the Legislature has not done so and "could have easily included (it)," and iii) affirm the Court of Appeals decision, which as is proper under *Wexford*, enforced Section 9(1)(a)'s unambiguous language.[7]

4. This Court Has Recognized That For-Profit Educational Institutions Can Qualify For Personal Property Tax Exemption.

Applying Section 9(1)(a)'s unambiguous language is especially appropriate here because the personal property of educational institutions has been exempt from property taxation, regardless of whether the exemption claimant has been a nonprofit, since at least 1897. Indeed, in *Detroit v Detroit Commercial College*, 322 Mich 142; 33 NW2d 737 (1948), the Court recognized that it had granted exemption to a for-profit educational institution where the exemption statute did not require nonprofit status:

> In *Webb Academy v City of Grand Rapids*, 209 Mich 523, 177 NW 290, 293, the school was incorporated for profit. Its purpose was to prepare students for colleges and universities, to furnish regular and special courses in the academic grades, and

[7] Page 8 of the City's Brief claims that the Court of Appeals "shockingly" missed that Michigan incorporation is not required to qualify for the exemption contained in Section 9(1)(a). However, in the Court of Appeals the parties had agreed, as this Court noted in *Wexford*, 474 Mich at 203, n 5, that "(t)he requirement that to be tax-exempt, an institution be incorporated within the state has been found to be unconstitutional." City Court of Appeals Brief on Appeal, p 6, n 5, Appellant's Appendix ("App") at 384a and SBC Court of Appeals Brief on Appeal, p 4, n 3, App at 308a. Obviously, the portion of the Court of Appeals opinion that included "incorporated under the laws of this state," was simply quoting the words of Section 9(1)(a).

> such purposes as may be incident to academic educational institutions. It sought exemption from real estate taxation under the following statute:
>
> > 'The following real property shall be exempt from taxation:
> >
> > * * *
> >
> > 'Fourth, Such real estate as shall be owned and occupied by library, benevolent, charitable, educational and scientific institutions incorporated under the laws of this state, with the buildings and other property thereon while occupied by them solely for the purposes for which they were incorporated * * *.' 1 Comp. Laws 1915, § 4001.
> >
> > We there held that even though the school was conducted for profit it was entitled to exemption from real estate taxes. . . . [*Id.* at 151.]

The City's Brief, pp 15-16, argues that *Webb* is factually distinguishable because the school in *Webb* was a "general educational institution." The City misses the crucial statutory construction lesson: this Court has previously granted exemption to a for-profit educational institution where the statutory language did not require nonprofit status. The statutory exemption language involved in *Webb*, 1915 CL 4001, is contained in App 661a-662a. That statutory language is essentially identical to the controlling language here. Both statutes simply exempt educational institutions without including the word "nonprofit" or otherwise requiring nonprofit status. Consequently, *Webb* verifies that the Court of Appeals below correctly applied the clear and unambiguous language of Section 9(1)(a).[8]

[8] The City's Brief, p 8, n 4, recognizes that in *David Walcott Kendall Mem Sch v Grand Rapids*, 11 Mich App 231, 240; 160 NW2d 778 (1968), the Court of Appeals articulated a test for whether a specialized school of higher education was entitled to exemption. This 1968 decision recognized that a for-profit educational institution had been granted exemption in *Webb*. *Id.* at 237. Furthermore, the following standard that the Court established did not require that the exemption claimant be a nonprofit institution:

Furthermore, this Court has explicitly rejected the argument the City makes in this case. In *Home and Day School v Detroit*, 76 Mich 521; 43 NW 593 (1889), this Court considered whether a for-profit corporation that ran a school was entitled to a property tax exemption. At the time, the applicable statute "provide[d] for exemption from taxation of the personal property of 'library, benevolent, charitable, and scientific institutions incorporated under the laws of this state, and such real estate as shall be occupied by them for the purposes for which they were incorporated.'" *Id*. at 523. This Court held that the for-profit school at issue in *Home and Day School* met the definition of the term "scientific institution" and "the only condition imposed on the exemption is that the land exempted shall be 'occupied for the purposes for which they were incorporated.'" *Id*. at 524. The City of Detroit argued that exemption should not be given to the school. One of the grounds asserted by the City of Detroit was:

> [T]hat the complainant's institution is not in any sense a free school or academy; that it was not established as a free school or academy, or as a benevolent school or academy, nor is it at present conducted or carried on as a benevolent school or academy; that said school or academy was not established, nor is it sustained, in whole or in part, by contributions or donations or endowments; that it is a purely commercial enterprise, conceived, established, and operated for pecuniary results and gain solely…. [*Id.* at 528.]

The Court rejected the City of Detroit's arguments, holding, in language that is as applicable today as it was 127 years ago, that:

> We formulate the following test to be applied in dealing with schools of higher education which seek tax exemption drawn from prior cases and the factual situation before us: If the particular institution in issue were not in existence, then would, and could, a substantial portion of the student body who now attend that school instead attend a State-supported college or university to continue their advanced education in that same major field of study?

Id. at 240.

> Where language is so plain as to convey a clear and intelligible meaning, we have no right to go beyond it, and impose another meaning. The language of the legislature in exemption from taxation is as much entitled to obedience as that imposing taxation. This law has been in force for a very long time, and has never been amended, except to enlarge the scope of the exemption. Its purpose, as expressed, does not appear ambiguous, and in the continued application of it has not impressed any legislature as too liberal. When it is so regarded, it will have to be changed in form to narrow it. [*Id*. at 525.]

That, in a nutshell, is exactly what the Court of Appeals correctly held below.[9]

C. The Court Of Appeals Correctly Rejected The City's Reliance On Section 7n.

The City argues that this Court should add the word "nonprofit" to Section 9(1)(a) under the doctrine of *in pari materia*, based on the Legislature's purportedly putting such a requirement into Section 7n, which is in the part of the Act that generally establishes real estate exemptions. Section 7n provides, in relevant part, for exemption of the "(r)eal estate or personal property owned and occupied by **nonprofit theater**, library, educational, or scientific institutions . . . with the buildings and other property thereon while occupied by them solely for the purposes for which the institutions were incorporated . . . ." (Emphasis added.) For the reasons described below, the Court of Appeals properly rejected this argument and this Court should do the same.

1. The Doctrine Of *In Pari Materia* Does Not Apply Because Section 9(1)(a) Is Unambiguous.

Relying on two prior decisions of this Court, *Tyler*, 459 Mich 382, and *Voorhies*, 220 Mich at 157, the Court of Appeals correctly concluded that the doctrine of *in pari materia* does not apply because Section 9(1)(a) is unambiguous. As this Court held in *Tyler*, 459 Mich at 392, the doctrine of *in pari materia* does not apply to a clear and unambiguous statute:

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[9] Page 15 of the City's Brief makes the feeble claim that under the Michigan Constitution of 1963, the Legislature can no longer exempt for-profit educational institutions. This specious claim is fully addressed below. This Court should readily see that Const 1963, art 9, § 4 in no way prohibits the Legislature from exempting for-profit educational institutions.

> [T]he interpretive aid of the doctrine of *in pari materia* can only be utilized in a situation where the section of the statute under examination is itself ambiguous. *Voorhies v Faust*, 220 Mich 155, 157, 189 NW 1006 (1922); 2B Singer, Sutherland Statutory Construction (5th ed), § 51.01, p 117; Black's Law Dictionary (6th ed), p 791. That not being the case here, *in pari materia* techniques are inappropriate.

Incredibly, the City's Brief does not even mention, let alone discuss, this Court's decisions in *Tyler* and *Voorhies*, which are dispositive of the City's *in pari materia* argument and were cited in the Court of Appeals decision below.

The City argues that under *Wayne Co Chief Executive v Mayor of Detroit*, 211 Mich App 243; 535 NW 2d 199 (1995), the Court of Appeals should have applied the doctrine of *in pari materia* even if Section 9(1)(a) were unambiguous. In that case, the Court of Appeals did accept the Circuit Court's use of *in pari materia*, but that part of the Court's decision should be viewed as *dicta*. There, MCL 211.67a(2) applied where the State had acquired title to tax reverted property and MCL 211.40 applied prior thereto. The *in pari materia* doctrine was not needed and should not have been applied, in part, because the Court of Appeals held that "[w]e disagree that the two statutes are irreconcilable." *Id*. at 247. Furthermore, the doctrine was not used to change either of the statutes involved. Additionally, a Court of Appeals decision does not trump this Court's holdings in *Tyler* and *Voorhies*, that the doctrine of *in pari materia* should not be invoked where the statute is unambiguous.[10]

[10] In its Reply Brief in support of its Application for Leave to Appeal, the City cited *People v Denio*, 454 Mich 691, 699; 564 NW2d 13 (1997) and argued that notwithstanding *Tyler*, the Court of Appeals should have considered that "a statute that is unambiguous on its face can be 'rendered ambiguous by its interaction with and its relation to other statutes.'" [App 747a]. If the City's reply brief makes this argument again, this Court should reject it because: i) as the Court of Appeals ruled, Section 7n and 9(1)(a) are alternative exemption statutes and Section 9(1)(a) is unambiguous; and ii) *Denio* is distinguishable. There the Court was required to look at another statute to determine the "penalty" imposed by a conspiracy statute because the conspiracy statute did not define the term but instead referred to another statute to determine the

2. *Wexford* Supports The Court Of Appeals Decision Below.

The City places great reliance on this Court's decision in *Wexford, supra,* describing and applying that decision as follows:

> In *Wexford*, this Court held – despite the absence of the word 'nonprofit' in MCL 211.9(1)(a) – that an exemption claimant seeking an exemption under MCL 211.7o or its '*corollary statute*' MCL 211.9(1)(a) must be a nonprofit institution. *Id*. at 215. Thus, for an exemption claimant to seek a charitable exemption under MCL 211.9(1)(a), the institution must be nonprofit. The result in this case should be the same. [City Brief, p 14.]

As described above, this Court held in *Wexford* that "the tribunal erroneously engrafted a nonexistent threshold of charitable activity." *Id.* at 221. "Had the Legislature wanted such a threshold, it could have easily included one." *Id.* Here, the Tribunal made the same error by engrafting the word "nonprofit" into Section 9(1)(a) where the Legislature has never enacted it, and easily could have done so. Thus, the City has ignored that the Court of Appeals ruled correctly under *Wexford*.

Furthermore, the City also ignores the following: i) Wexford was a nonprofit institution; ii) at issue was whether Wexford was a charitable institution, not whether Section 9(1)(a) required a charitable exemption claimant to be nonprofit; and iii) consequently the parties did not in any way raise or address whether Section 9(1)(a) required a charitable exemption claimant to be a nonprofit. The City's argument tries to mislead this Court into thinking that *Wexford* had presented this Court with the issue of whether Section 9(1)(a) required a charitable exemption claimant to be a nonprofit.[11]

"penalty." In this case, the language of Section 9(1)(a) is independent of other exemptions under the Act, such as Section 7n, and does not require reference to any other provisions in the Act.

[11] This Court might be similarly misled by the City's reliance on *Kalamazoo Aviation History Museum v City of Kalamazoo*, 131 Mich App 709; 346 NW2d 862 (1984) and *American Youth Foundation v Benona Twp*, 37 Mich App 722; 195 NW2d 304 (1972). As in *Wexford*, the

The City also disregards two other important rulings in *Wexford*. In *Wexford*, this Court noted that a nonprofit institution might not be charitable, i.e., to be charitable requires more than just being nonprofit. *Id.* at 204, n 6. Additionally, *Wexford* reiterated, as this Court had long held, that to be charitable the exemption claimant had to provide a gift. *Id.* at 214. Given the foregoing, it would be logical for this Court to have concluded that being nonprofit was an indispensable part of being "charitable."

Being "nonprofit" however, is not an indispensable part of being "educational." Therefore, there is no conflict between *Wexford* and the Court of Appeals decision below. The Court of Appeals applied the unambiguous language of Section 9(1)(a), consistent with *Wexford's* holding that the judiciary not engraft requirements into exemption statutes that the Legislature has chosen not to enact.

3. The City's Construction Improperly Adds Words To Section 7n That The Legislature Never Enacted.

The City reads Section 7n as if it included language such as: "**Under this Act, only the property of a nonprofit educational institution is eligible for exemption."** Section 7n, however, does not contain any such language. As previously described, under the foremost rule of statutory construction and this Court's decisions such as *Roberts, supra*, *Whitman, supra*, *Walters, supra*, and *Wexford, supra*, it is improper for the judiciary to add words to a statute when the Legislature has chosen not to do so. This is especially true here where for over 100 years the Legislature has not added the word "nonprofit" to the language at issue, and the Legislature on two occasions has added the word "nonprofit" to the sentence that follows the

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exemption claimants in those cases were nonprofits. That the American Youth Foundation was nonprofit is confirmed in the Foundation's prior appeal decision, which is reported at 8 Mich App 521, 154 NW2d 554 (1967). Thus, the issue now before this Court was not present in those cases.

language at issue. Therefore, the Court of Appeals correctly held that even if Section 7n exempted only nonprofit institutions, it would not preclude SBC's exemption under Section 9(1)(a), but instead, "the most that can be said is that petitioner would not qualify for an exemption under MCL 211.7n." Court of Appeals Opinion at 3; App at 465a.

4. Adding The Word "Nonprofit" To Section 9(1)(a) Would Make It Coextensive With Section 7n And Thereby Improperly Render Section 9(1)(a) Nugatory.

Adding the word "nonprofit" to Section 9(1)(a), as the City urges, would make it coextensive with Section 7n and thereby improperly render Section 9(1)(a) nugatory. This violates the rule that statutes should be construed so that they are not rendered nugatory. *In re MCI Telecommunications*, 460 Mich 396, 414; 596 NW2d 164 (1999) (a court should avoid a construction of a statute that would render any part of it surplusage or nugatory).

5. For-Profit Educational Institutions Are Exempt Under Section 7n.

While this Court need not address Section 7n's requirements, given that Section 7n does not forbid exemption under Section 9(1)(a), this Court can reasonably conclude that Section 7n exempts for-profit educational institutions. In 1974 PA 358, the Legislature did not simply add the word "nonprofit" to prohibit exemption to for-profit theaters, libraries, educational institutions and scientific institutions. Rather, the Legislature added two words, "nonprofit theater," in order to provide exemption to nonprofit theaters. See: 1971 PA 189, App at 322a, and 1974 PA 358, App at 332a. For that reason, Section 7n does not require an educational institution to be nonprofit to qualify for exemption.[12]

[12] Illustratively, Section 7n is written differently than MCL 205.54a(1)(a), which sets forth sales tax exemptions and identifies some of the eligible taxpayers as follows: "**nonprofit** school, **nonprofit** hospital, or **nonprofit** home for the care and maintenance of children or aged persons operated by an entity of government. . . ." [Emphasis added].

Assuming, *arguendo*, this Court concludes that Section 7n were ambiguous (which it is not), as to whether the word "nonprofit" modifies "educational," **to resolve the ambiguity**, this Court should consider that: i) in 1974 the Legislature added two words, "nonprofit theater," rather than just adding the word "nonprofit"; and ii) the legislative history to the 1974 amendment, contained in App at 366a-368a, describes the amendment as adding "nonprofit theater" and does not in any way indicate that "nonprofit" modifies "educational."[13]

6. Even If Section 7n Does Not Exempt For-Profit Educational Institutions, Under The Court Of Appeals Decision, Sections 7n And 9(1)(a) Do Not Conflict, Are In Harmony, Are Fully Effective And Are Consistent With How Michigan Courts Have Previously Construed Tax Exemption Statutes.

The City's primary point is that Sections 7n and 9(1)(a) irreconcilably conflict under the Court of Appeals decision. This is untrue. As the Court of Appeals ruled:

> [E]ven if MCL 211.7n were applicable and required an educational institution to be nonprofit in order to qualify for the tax exemption contained therein, the most that can be said is that petitioner would not qualify for an exemption under MCL 211.7n. This does not result in petitioner being deprived of a tax exemption under MCL 211.9(1)(a) if it otherwise applies. [Court of Appeals Opinion at 3; App at 465a].

Under the Court of Appeals decision, both Sections 7n and 9(1)(a) are fully effective, harmonious and do not conflict.

The City cites *People v Ellis*, 224 Mich App 752, 756; 569 NW2d 917 (1997), for the proposition that "when the construction of two statutes lend themselves to a construction that avoids conflict, that interpretation of the statutes is controlling." City Brief, p 13. The Court of

[13] Even if this Court concluded that Section 7n was ambiguous with respect to whether "nonprofit" modifies "educational," it would be erroneous for the Court to engraft the word "nonprofit" from an ambiguous statute, in order to blatantly change what the Legislature had unambiguously provided in Section 9(1)(a). Such a tortured construction has no place in a rule of law court that enforces what the Legislature has unambiguously provided.

Appeals decision does this by reading Sections 7n and 9(1)(a) as alternatives that do not conflict. In contrast, the City's reading unnecessarily tries to fabricate a conflict that does not even exist.

Significantly, other cases on which the City relies for the proposition that courts should harmonize statutes so they do not conflict, support the Court of Appeals decision. Specifically, in *Michigan Basic Property Ins Ass'n v Office of Fin & Ins Regulation*, 288 Mich App 552; 808 NW2d 456 (2010), cited on City Brief, p 13, the Court did not find an irreconcilable conflict between statutes. Furthermore, that decision, 288 Mich App at 560, specifically cautioned against adopting the unlawful statutory construction that the City urges here:

> When construing a statute, 'a court should not abandon the canons of common sense.' *Marquis*, 444 Mich at 644, 513 NW2d 799. 'We may not read into the law a requirement that the lawmaking body has seen fit to omit.' *In re Hurd–Marvin Drain*, 331 Mich 504, 509, 50 NW2d 143 (1951). When the Legislature fails to address a concern in the statute with a specific provision, the courts 'cannot insert a provision simply because it would have been wise of the Legislature to do so to effect the statute's purpose.' *Houghton Lake Area Tourism & Convention Bureau v Wood*, 255 Mich App 127, 142, 662 NW2d 758 (2003).[14]

The City's Brief, p 13, also misses the import of *In re Indiana Michigan Power Co*, 297 Mich App 332; 824 NW2d 246 (2012). This decision, 297 Mich App at 345, also cautions against adding language into statutes that the Legislature did not see fit to include, with a virtually identical discussion of the issue as is contained in *Michigan Basic Property Ins Ass'n*, *supra*. Furthermore, in this decision the Court noted that, "[a] statutory provision should be viewed as ambiguous only after all other conventional means of interpretation have been applied and found wanting." *Id*. at 344. Here, the Court of Appeals adopted the conventional construction of

[14] There is wisdom in the Legislature's exempting the property of for-profit educational institutions, and thereby supporting educational endeavors. Whether that is wise public policy is for the Legislature, and not the judiciary, to decide.

exemption statutes under the Act; the two exemption statutes are alternatives and a taxpayer can qualify for exemption under either one.

Children's Hosp of Michigan v Commerce Twp, unpublished opinion per curiam of the Court of Appeals, issued April 21, 1998 (Docket Nos. 201864 and 201865) App at 370a-372a, shows that below, the Court of Appeals did adopt the conventional view of the Act's exemption statutes as alternatives. In *Children's Hosp* the township claimed that section 9(a) conflicted with section 7r of the Act, MCL 211.7r. The Court of Appeals affirmed the exemption under Section 9(a) because: i) rather than conflicting, the two statues were simply alternatives so a taxpayer could "qualify for an exemption under either statute"; and ii) "[n]o statutory provision indicates that a taxpayer may claim an exemption under only one of the provisions of the GPTA. . . ." *Children's Hosp*, at 3; App at 372a.

Below, in the Court of Appeals, the City asserted that *Children's Hosp* was distinguishable because: i) the two exemption statutes there were for different types of entities in that section 7r provided exemption for property of hospitals and public health entities and section 9(a) was for charitable entities; and ii) here both sections 7n and 9(1)(a) apply to educational institutions. If the City makes this argument in its reply brief, this Court should reject it because this is a difference that is of no consequence. Critically, section 7n does not say: an educational institution's failure to qualify for exemption under section 7n, precludes exemption under section 9(1)(a). Given this, the reasoning of *Children's Hosp* applies here.

Nor is *Children's Hosp* the only case that has recognized exemption statutes are alternatives. *Michigan State University v Lansing*, unpublished opinion per curiam of the Court of Appeals, issued February 15, 2005 (Docket No. 250813), App at 62b, held that "MCL 211.7n

does not demand that every nonprofit educational institution seek exemption solely under its language to the exclusion of all other statutory-exemption provisions." *Id*. at 7; App at 68b.

Indeed**, the City's unprecedented construction would fundamentally and dramatically change the Act's exemptions by requiring exemption claimants to satisfy all exemption statutes that arguably apply.** If the Court adopted the City's statutory construction it would radically change how exemption statutes have been interpreted and applied in Michigan.

7. If Section 7n Is Unambiguous In Not Granting Exemption To For-Profit Educational Institutions, Then Section 9(1)(a) Is Unambiguous In Exempting For-Profit Educational Institutions.

The City's approach to statutory construction contains a significant illogical double standard and inconsistency. The City's position rests on the following faulty reasoning:

> When the Legislature enacted Public Act 358 of 1974 and added "nonprofit theater" to Section 7n, it clearly and unambiguously provided that for-profit educational institutions could no longer obtain exemption under Section 7n, i.e., nonprofit modified educational in, "nonprofit theater, library, educational, or scientific institutions. . . ."

If this were true (again, it is not), and in 1974 the Legislature ended the real property tax exemption that had been granted to for-profit educational institutions for decades, it must logically follow that in Section 9(1)(a), the Legislature has chosen not to end the personal property tax exemption granted to such institutions. The Legislature has amended Section 9(1)(a) a dozen times since 1974 and has chosen not to add the word "nonprofit" to the language at issue.[15] The Legislature's silence puts this issue to rest.

[15] The meaning of the word "occupy" in Section 7n is not material to the resolution of this case. However "occupy" is defined, it does not change the unambiguous language of Section 9(1)(a), nor does it change that Sections 7n and 9(1)(a) are both fully effective and harmonious under the Court of Appeals decision.

D. The Michigan Constitution Allows The Legislature To Exempt For-Profit Educational Institutions.

The City attempts to manufacture a "conflict" between the unambiguous language of Section 9(1)(a) and the Michigan Constitution. See City's Brief at 9 (alleging that the Court of Appeals below "directly conflicts with the Michigan Constitution."). There is no such conflict.

Article 9, § 4 of the Michigan Constitution provides that: "[p]roperty owned and occupied by non-profit religious or educational organizations and used exclusively for religious or educational purposes, as defined by law, shall be exempt from real and personal property taxes." Const 1963, art 9, § 4. **While this unambiguous language provides an exemption, it in no way limits the Legislature's ability to exempt property owned by a for-profit educational institution**. The City reads art 9, § 4 as if it includes the underlined language that has been added in the following:

> Property owned and occupied by non-profit religious or educational organizations and used exclusively for religious or educational purposes, as defined by law, shall be exempt from real and personal property taxes **and for-profit educational institutions may not be granted exemption**.

However, this underlined prohibition is not in art 9, § 4. Adding this nonexistent limitation would be erroneous. Thus, there is no conflict between art 9, § 4 and Section 9(1)(a) and, contrary to the City's contention, there is no language in the Constitution limiting the power of the Legislature from exempting the property of for-profit educational institutions.

Indeed, the power to define what is and is not taxable for property tax purposes is reserved to the Legislature under article 9, § 3 of the Constitution, which says, "(t)he legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes." Const 1963, art 9, § 3. This Court has repeatedly recognized that the Michigan Constitution gives the Legislature

virtually plenary power to enact tax exemptions, subject only to a rational basis review. See, e.g., *Banner Laundering Co v Gundry*, 297 Mich 419; 298 NW 73 (1941); *Rockwell Spring & Axle Co v Romulus Twp*, 365 Mich 632; 114 NW2d 166 (1962); See also, *Hamilton v Deland*, 227 Mich 111; 198 NW 843 (1924) (quoting with approval a case holding that "the Legislature can enact nothing in derogation of a constitutional provision, but unless such provision, in addition to being self-executing, is also a limitation upon the power of the Legislature, it may enact laws in aid of and in addition to the provision and extending its terms.").

There is no limit in the Constitution that prevents the Legislature from exempting the property of for-profit educational institutions just because the Constitution mandates that the property of nonprofit educational institutions be exempt. Two other examples are pertinent:

- The Legislature has exempted from the school operating millage and the state education tax, "property occupied by a public school academy and used exclusively for educational purposes . . ." without requiring that the property owner be a nonprofit entity. MCL 380.503(9). That statute would "conflict" with the Constitution if the Court accepted the City's argument, but there is no conflict. Furthermore, MCL 380.503(9) is another instance of the Legislature allowing a tax exemption for property used for educational purposes, even if it benefits for-profit entities.

- If the Constitution mandated that certain property used in agricultural production be exempt, it would not preclude the Legislature from exempting other agricultural property.

Thus, the Legislature has the Constitutional authority to exempt for-profit educational institutions and it has lawfully done so in Section 9(1)(a).

CONCLUSION AND RELIEF REQUESTED

The language at issue in Section 9(1)(a), unambiguously exempts the personal property of educational institutions, regardless whether they are for-profit, and does not in any way contain a nonprofit requirement. The City does not and cannot deny that for over 100 years the

Legislature has chosen not to add the word "nonprofit" to the language at issue, even though it has amended the statute on numerous occasions and twice added the word "nonprofit" to the sentence that follows the language at issue. Accordingly, the Court of Appeals correctly applied the unambiguous language of Section 9(1)(a).

Appellee SBC respectfully requests that for these reasons and the other reasons provided above, the Court affirm the Court of Appeals below or, in the alternative, determine that leave to appeal was improvidently granted and dismiss the City's appeal, and remand this case to the Tax Tribunal for a determination of whether SBC is an educational institution under Section 9(1)(a).

Respectfully submitted,
Honigman Miller Schwartz and Cohn LLP
Attorneys for SBC Health Midwest Inc.

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By: /s/ John D. Pirich

John D. Pirich (P23204)
Stewart L. Mandell (P33781)
Daniel L. Stanley (P57052)
222 North Washington Sq., Ste. 400
Lansing, MI 48933-1800
(517) 377-0712

20710355.17